

Whitehead, W. A., on
N. J. & N. Y. Boundary.

1859.

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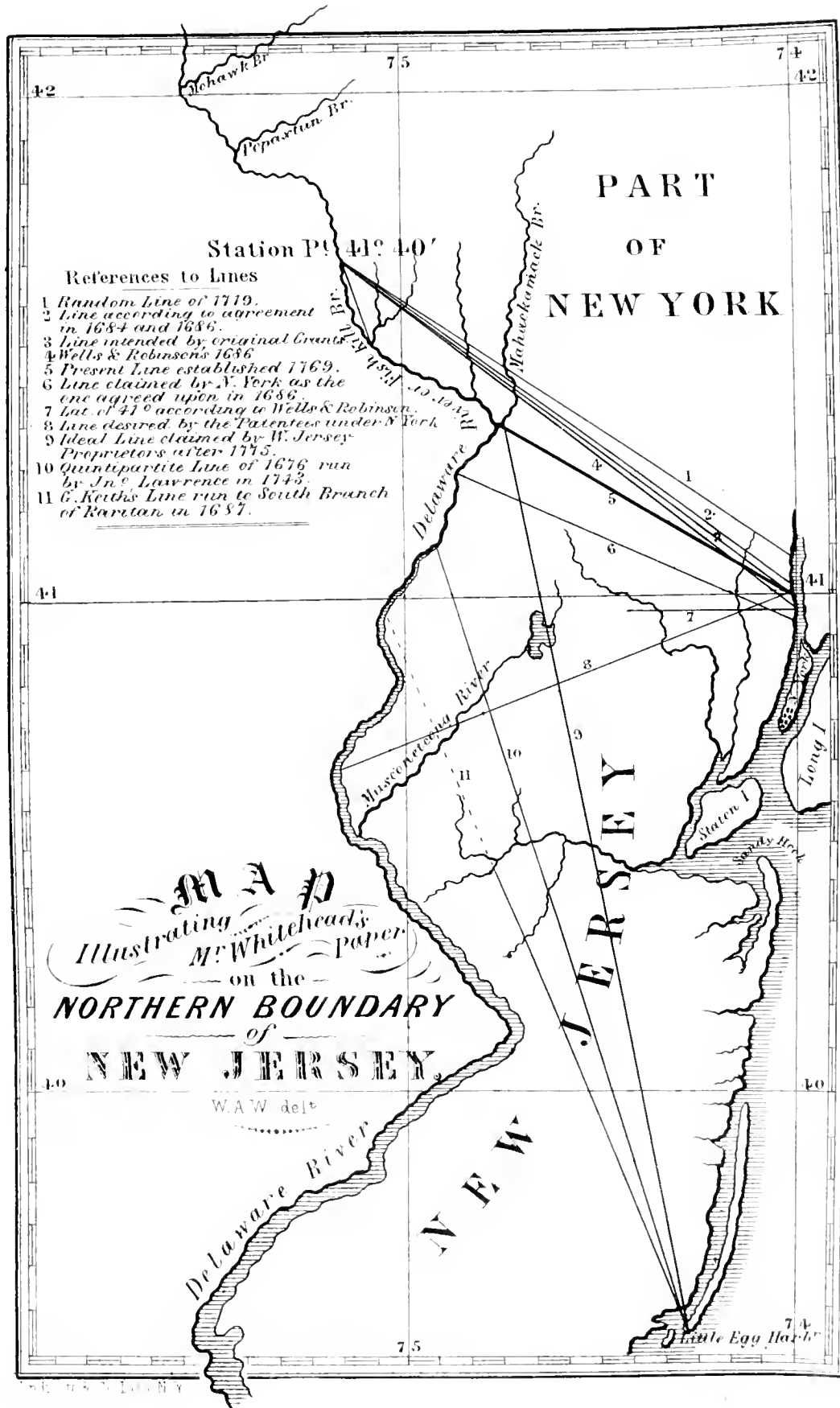
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W. A. Whitehead





Northern Boundary Line.

THE

CIRCUMSTANCES LEADING TO THE ESTABLISHMENT,

IN 1769,

OF THE

NORTHERN BOUNDARY LINE

BETWEEN

NEW JERSEY AND NEW YORK.



A PAPER READ BEFORE THE NEW JERSEY HISTORICAL SOCIETY,
MAY 19, 1859,

BY WM. A. WHITEHEAD.

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Northern Boundary Line.

When the Duke of York was induced, "in consideration of a competent sum of good and lawful money," to grant to Lords Berkley and Carteret a part of the tract of American soil received from his royal brother, Charles II., the act was regarded with great apprehension and disfavor by his Governor, Richard Nicolls. He did not hesitate to say that the Duke thereby despoiled himself of the best portion of his possessions; to use his own language, that New Jersey "comprehended all the improvable part of Your R^y. H^y. his Pattent, and capable to receive twenty times more people than Long Island and all the remaining Tracts in Your R^y. H^y. his patent, in respect not onely to the quantity of the Land, but to the Sea Coast and Delaware River, the fertility of the soyle, the neighborhood to Hudson's River, and lastly the faire hopes of rich mines, to the utter discouragement of any that shall desire to live under Your R^y. H^y. his protection."*

Several of Nicolls' successors, equally watchful of the Duke's interests, and impressed with the value of the grant, subsequently counselled the re-annexation of the territory thus lost. And although the republican form of government, since established where royalty and its attendant aggressions were then dominant, has been thought to be at variance with such illiberal and covetous views, and therefore a guarantee against all danger from similar counsels now, yet on more than one occasion New Jersey has had cause to complain that a change of government has not wrought a corresponding change in the motives and actions of the authorities and people of New York. Judging from their course at different times, and under varied circumstances, it would seem that the estimate placed upon New Jersey by Governor Nicolls, is still deemed sufficiently correct to lead to unmistakable manifestations of a desire to regain possession of portions, at least, of what he so unwillingly relinquished.

The bounds of New Jersey, as specified in the grant of the Duke of York to Lords Berkley and Carteret, were as follows: "All that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhitas Island, and bounded on the east, part by the

* N. Y. Col. Doc'ts. Vol. III., p. 105.

main sea and part by Hudson's River, and hath upon the west Delaware Bay or River, and extendeth southward to the main ocean as far as Cape May at the mouth of Delaware Bay; and to the northward as far as the *northermost branch of the said Bay or River of Delaware, which is in forty-one degrees and forty minutes of latitude*, and crosseth over thence in a straight line to Hudson's River in *forty-one degrees of latitude*, which said tract of land is hereafter to be called by the name or names of New Ceaserea or New Jersey."

No terms could have been used more clearly defining the tract to be conveyed. On the east, a river and the ocean—on the west and south, a river and a bay—on the north, a straight line, extending from a point in 41 deg. 40 min. North Latitude, on one river, to a point in 41 deg. North Latitude on the other. Yet, on inspection of the geographical lines which at the present day define the limits of New Jersey, they are found to correspond no longer with the prescribed bounds on the east, nor on the north; so that instead of their including all the land "lying and being to the westward of Long Island and Manhitas Island," an island containing more than 50,000 acres, lying west of such line, has passed into the possession of others; and that on the north, they come short of the extreme point designated in the grant by nearly twenty miles.

To narrate the circumstances which led to this last mentioned curtailment of the dimensions of the State—presenting in succinct terms the manner in which it was effected, and the questions involved—is the simple intention of this paper. The subject admits of little embellishment either of language or of rhetoric, and the Society must overlook the inherent dryness of the geographical and business details which the end in view requires to be stated.

The Delaware River takes its rise among the western slopes of the mountains, lying in the eastern part of Delaware County, in the State of New York, and runs southwestwardly, under the name of the Mohawk branch, until it arrives within a few miles of the 42d parallel of north latitude. There it receives, what is known according to some maps as the Oquago branch, and other small tributaries from the north; and turning, almost at a right angle, wends its way toward the southeast, receiving increased volume at about 41 deg. 55 min. N. L. from the waters of the Popaxtun branch, whose springs lie partly among the gorges of the Catskills, and partly in the vicinity of those originating the Mohawk. Proceeding onward, in the latitude of about 41 deg. 20 min., it receives the Mackhackimack branch from the north, and again changes its course to the southwest. These are the only tributaries, north of the 41st parallel, which merit the distinctive title of branches. The first two may be said to form the river, and their junction is known as "the upper, or Shehawkin, forks of Delaware." To one or the other of these certainly belongs the title of the northernmost branch of the river, and if the Mohawk branch, from its

extension farthest to the north, should be considered the main stream, the distinctive title devolves upon the Popaxtun branch. But so imperfect was the knowledge possessed in 1664, respecting the course of rivers and the general geography of the country, it is not surprising that it should have been found difficult to reconcile the descriptions given in the early grants with the results of actual surveys, or that confusion should have arisen from conflicting claims. There was scarcely a charter that did not interfere in some measure with privileges already secured, or contemporaneously granted under the authority of different sovereigns or different incorporated companies; and the maps which have come down to us, show conclusively that they were calculated to mislead, rather than to furnish information of service in preventing or correcting such errors.

At the date of the Duke of York's grant to Berkley and Carteret, there were but few maps professing to give the position of places, or the physical geography of the interior, and they all seem to be more or less copies of one by Nicholas Joannis Vischero, which is thought to have been published in 1654. One by Vanderdonck, published in 1656, which is unquestionably copied after Vischero's, may be seen in the New York Historical Society Collections, Vol. 1st, New Series, and also, so far as it refers to New Jersey, in the first volume of our own Collections, and one or both doubtless formed the basis of the map to be found in the works of Montanus and Ogilbie, published in 1671; and as Ogilbie is styled "Cosmographer and Geographical Printer to his Majesty," the map that he selected to illustrate this part of the continent, may reasonably be considered the one most likely to be consulted by those concerned in the grant of New Jersey.

On all these maps it will be seen that a stream corresponding in position with the Musconetcong, is made to join another corresponding with the Walkill, so that a water communication was exhibited between the Delaware and the Hudson by the Esopus river; and also that, in about the latitude of 41 deg. 40 min. another stream makes a similar connection between the two rivers, the source of the Delaware being represented as being still farther north. The latitude in which the junction of this more northerly stream with the Delaware is located on the maps—its course—and the existence of a place upon it designated as *Meoehkonk*, in a position corresponding to one in later times called *Moeghkan*—all indicate that the geographers of that day knew of no other branches of the Delaware than the Musconetcong in about latitude 40 deg. 30 min., and the Popaxtun, in about 41 deg. 40 min., according to their maps. Hence, when a point on the river was to be selected to limit the grant in the northwest, the junction of the most northern branch of the Delaware with the main stream was taken as one to be found readily; and to identify it more particularly, the latitude was given in which it appeared to be. This would seem to be a common-sense explanation of the why and wherefore of the language of the grant—"to the northward as far as the northernmost branch of the said Bay or River of Delaware, which is forty-one and forty minutes of latitude."

Several years must have elapsed before the region through which the line was to run attracted the eye or excited the covetousness of land speculators, or became sufficiently known to call for a delineation of the boundary. It is certain that no record exists of any negotiations on the subject while the province was held in common by Berkley and Carteret. After the division into East and West Jersey, and the arrival of Lawrie as Deputy Governor of the eastern province under Robert Barclay, some personal interviews took place between him and Governor Dongan, in pursuance of the directions of the Proprietors, who were ever anxious to pursue such a course toward their powerful neighbor as would prevent any just cause of complaint;* and although we have not the time or facts definitely stated, it seems probable that at one of these interviews a line of division was authorized to be run, or some understanding arrived at respecting it; as we find a Minute of the Council of New York, dated April 9th, 1684, the language of which would imply that some line had been agreed upon; and in 1685 the Governor and Council of New Jersey, on granting some lands, made part of the bounds to begin "at Tappan Creek upon the Hudson's River at the line of Division agreed upon by the Governors of the two provinces."†

This line, designated on the map as No. 2, was confirmed by subsequent negotiation; and we find from a minute of the Council of New York, June 30th, and from the minutes of the East Jersey Proprietors of July 8th and Sept. 9th, 1686, that an agreement had been entered into between the Governor of New York and the Governors of the two Jerseys, for running the lines between the three governments. "The most northerly branch," of the Delaware was *first* to be determined, and the 1st September was the day on which the three surveyors, George Keith—subsequently so prominent a character, through his discussions with the Quakers—being appointed for East Jersey, Andrew Robinson for West Jersey, and Philip Wells for New York—were to meet *at the forks of Delaware* to commence their labors; the determination of any two of them to be conclusive as to the lines. The orders of the New York Council to their Surveyor were, "Carefully and with great exactness to run the Line between this province and that of East Jersey, *beginning* in the latitude of *forty-one degrees and forty minutes* upon Delaware River;" instructions which, taken in connection with the place appointed for the meeting, show as

* Their language on this occasion to Lawrie was, "Be careful of avoiding all things that may interfere with their interest, or give just reason of complaint from them; that he [Lawrie] be not apt to give any encouragement to people to transport themselves from thence, minding that we do not design to advance our interest by anything which may prove prejudicial to that province."—*Grants and Concess.*, p 171. It is to be regretted that similar good intentions did not always characterize the acts of the authorities of New York in their intercourse with New Jersey.

† Brief of New Jersey Claim, 1769. p. 8.

clearly as if written with a sunbeam that the views of the authorities of New York then, did not differ from those entertained by the New Jersey Proprietors.

For some cause not ascertained, what was so harmoniously inaugurated was not brought to a definite conclusion. Messrs. Wells and Robinson, however, fixed upon a point on the Delaware in 41 deg. 40 min. N. L., and also according to the New York authorities made sundry observations by which they fixed the point of 41 deg. N. L. on the Hudson, two or three miles south of the true parallel, as subsequently determined.* The line which would have resulted from their observations is designated on the map as No. 4.

The Proprietors of New Jersey, after repeated complaints to New York of the inconvenience resulting from the lines not being run, which were never responded to in a satisfactory manner, on the 5th May, 1695, nine years having elapsed, directed John Reid, their Surveyor General, to run the line agreed upon,* but their directions do not seem to have been carried out; at least we hear of nothing tending to the settlement of the vexed question until 1718, twenty-three years later, when the Assemblies of both provinces passed acts providing for the running and settling of the line, but not until 1719 did the work commence.†

Large districts of country by this time had become peopled by hardy tillers of the soil, and many disputes and controversies had arisen leading to personal contests, and contempt of all legal restraints by some, who, under the plea of not knowing to which province they belonged, acknowledged obedience to neither. Some held their lands under titles derived from the New York patentees, and were recognized as residents of that province, voting in the counties of Ulster and Orange. Some held grants from the New Jersey Proprietors, and frequently there were conflicting claims for the same tract; so that the peace and prosperity of the country called loudly for a settlement of the difficulty.

Robert Hunter was then Governor of both New York and New Jersey, and on him, therefore, devolved the duty of selecting the commissioners for both provinces. He named, for New Jersey, Dr. John Johnstone and George Willocks of Perth Amboy, and James Alexander, the Surveyor General of East Jersey—gentlemen every way qualified; the last, especially, from his mathematical and astronomical knowledge and high character, was eminently fitted for the service. But twenty years later, those interested in the New York claims assumed that the appointment of men so largely interested in the soil of New Jersey was a "flagrant abuse," of which they had a right to complain, as well as of the appointment of Col. Isaac Hicks and Capt. Robert Walters, because they were in no way in

* Brief, &c., p. 32-34. The New Jersey Proprietors always denied that the position on the Hudson was fixed—there was no documentary evidence of it.

† Nevill's Laws, p. 77.

terested in the New York patents, and "though of unspotted reputations, yet by no means qualified for such employments;" they were, however, associated with Allane Jarratt, Surveyor General of the Colony, of whose competency there was no question. With the knowledge we possess of the character of Gov. Hunter, and the encomiums pronounced upon his administration of the affairs of New York by contemporary authorities, it is not worth while to consider the objections made to his commissioners; particularly as those objections were naturally engendered by the fact, that the commissioners decided the point claimed by East Jersey to be the true one.

That point was, in truth, conceded in the instructions to the New York Commissioners, under the Great Seal of the Province, inasmuch as they were "carefully and diligently to inspect and survey all, or such, of the streams of water, that form the river Delaware, which they, the said commissioners, or surveyor or surveyors, may esteem necessary to be inspected or surveyed, in order to find out and determine which of the streams is the northernmost branch of the river Delaware; and that then, when such branch is so discovered, that the surveyor or surveyors to the best of their knowledge and understanding, discover and *find out that place of the said northernmost branch of Delaware River that lies in the latitude of forty-one degrees and forty minutes, which is the north partition point of New York and New Jersey.*" No language could have expressed more explicitly the point they were to find, and what, when found, it was to be considered.

Under these instructions the work was done, and the result embodied in a tripartite Indenture duly executed under the hands and seals of *all the commissioners and surveyors*, bearing date July 25, 1719, by which they agreed that the stream, known then as the Fish-kill, which was nothing else than the main river above the Mackhackimack, should be considered the northernmost branch; and that the point of 41 deg. 40 min. N. L. was at a place called Cashiegtunk on the east side of that stream, and that the point so designated should be the north partition point, or division, between the provinces.* The acceptance by the New Jersey commissioners of what we should call part of the main stream, as the northernmost branch of the Delaware, was certainly a concession to New York, as it waived the right of proceeding to the Popaxtun the true northernmost branch; their action in this respect being consistent with the views subsequently expressed, (in 1769) that "when a deed will admit of two constructions, the one definite and certain, the other vague and uncertain, that which is certain shall be taken and the other rejected." The latitude mentioned was a certainty, or could be reduced to a certainty, and should therefore be followed in preference to the selection of a stream rendered ambiguous or uncertain:† the New Yorkers endeavoring then to establish the doctrine that the be-

* Brief, &c., p. 15.

† Brief, &c., 23.

ginning of the branch was intended to be the boundary, and that the latitude was only descriptive; although the fact could not be controverted that if descriptive, the latitude did not correspond with the beginning of any branch of the river.

The line they agreed upon is marked on the map No. 3, and a random line to correspond with it was actually run from the Delaware to the Hudson, (No. 1) and it was only through the remissness of the New York commissioners in failing to attend, that the station on the latter river was not definitely fixed at that time.*

It might reasonably be supposed that such a conclusive document as the agreement just referred to, would have put an end to all existing differences, but two months after its execution, Mr. Jarratt, the New York surveyor, on reporting the proceedings of the joint commission to the President and Council of that province, (although his signature was affixed to the Indenture) stated that he had discovered some defects in the instrument used for taking the latitude. This gave an opportunity to the Council of New York to throw further obstacles in the way of a settlement, by adopting (September 24, 1719) a suggestion of the Committee to whom the matter had been referred, to the effect that "all further proceedings ought to be stayed until a correct and large instrument be procured for settling the said stations."†

It is not an unwarranted conjecture that the interposition of the New York surveyor to prevent the carrying out the tripartite Indenture was prompted by parties to whom grants had been given by the Duke of York or his governors; the limits of which it was thought would be curtailed by the proposed line.‡ One of these, the "Wawayanda Patent," was bounded on the south by the line of division between the provinces, and the New Jersey Proprietors, very properly, construed the language to mean the true line when ascertained, and not any ideal line which the parties in interest may have assumed as the correct one. Another, the "great Minisink Patent," granted in 1704, had a phraseology so peculiar that it seemed to extend indefinitely into New Jersey, but, at least, included 160,000 acres south of the division line. The parties interested in these grants were, of course, averse to acknowledging any rights of the East Jersey Proprietors that might interfere with them, and, could they have succeeded, would have had no compunction in making the line run from the 41 deg. on Hudson's River to the head of Delaware Bay.§

* Smith's New York, I., p. 204.

† Brief, p. 15.

‡ Smith, the New York historian, says: "What had been transacted gave a general alarm to many persons interested in several patents under New York, who before, imagined their rights extended to the southward of the random line." I., p. 204. It will be observed that the position of the random line was considerably farther north than the one subsequently ascertained, in consequence of the place of the 41st parallel not having been then determined.

§ N. Y. Assembly Proceedings, Feb. 18, 1784.

It is difficult to realize that after arriving so near to a settlement of the controversy, so many years should have elapsed before the subject again became prominent, excepting as the delay from time to time provoked personal contentions and animosities. In 1738, the northern part of the then county of Hunterdon was set off for the county of Morris,* and with increasing and encroaching population came additional difficulties. Still, such was the apathy of the New York authorities, arising either from a misapprehension of the importance of the subject, or from conceiving it to be simply a question of priority of titles between individuals, which might be settled by courts of law; and so much were the Proprietors of East Jersey engrossed with the growing troubles in the very heart of the province resulting from the Elizabethtown claims, that year after year fled away until 1747-'78, nearly thirty years after the almost-concluded settlement, when the Assembly of New Jersey could no longer refrain from adopting measures for running the line *ex-parte*, passing an act for the purpose, and submitting it for the sanction of the Crown; first giving to New York an opportunity to come into the arrangement, which that province declined doing. The contest was therefore for the time transferred to London. The Assembly of New York, after hearing the parties opposed to the measure, on Oct. 29th, 1748, directed their speaker to instruct Mr. Charles, the agent of the province, to oppose the act;† but Governor Clinton, writing to the Lords of Trade upon the subject, said, "As it does not appear to me that the interests of the Crown, or of this province in general, are any way concerned in the matter, but only the patentees of the lands along that line, I shall decline giving your Lordships any trouble in the affair, leaving to the particular persons concerned to take such steps as they shall think proper;" and gave as one reason for the lack of co-operation with the Governor of New Jersey in effecting a settlement, the fact of the expenditure of three thousand pounds previously to commissioners and surveyors, without any definite result.‡

It is asserted by Smith that this letter, which gave great umbrage to the popular party, was written by the Governor either directly for, or through the agency of, Mr. Alexander, in order to secure the influence of that gentleman, and Robert Hunter Morris then in England, in sustaining him with the ministry against his opponents in the province.

Thus presented for their consideration, deprived of its true importance,

* Nevill 1, p. 250. Hunterdon was created in 1713; previous to that time, all lands in the northern part of the province, not included in Bergen or Essex counties, were subject to the jurisdiction of Burlington.

† Minutes N. Y. Assembly. Smith, N. Y., II., p. 129.

‡ N. Y. Col. Doc'ts., Vol. VI. p. 454. Smith's N. Y., II. p. 130. The latter authority, quoting Governor Clinton's letter, has £300 as the amount. I follow the copy in the New York Colonial Documents. The act itself, authorizing the expenditure, reads, "seven hundred and fifty ounces of plate."—Laws of New York, 1692-1722. p. 171.

it is not surprising that it was not acted upon with dispatch; still an unaccountable silence respecting the bill seems to have been observed for some years; for although Mr. Paris, the accomplished agent of the East Jersey Proprietors, acknowledges on 17th January, 1749, the receipt of a box of papers from Mr. Alexander, relating to the boundary, the subject is not adverted to again by him for many months. In September, 1750, the New York Assembly, in response to an application from their agent, resolved that the expense incurred by him in opposing the New Jersey bill, should be made a public charge, thus throwing upon the entire province that which was borne in New Jersey by the East Jersey Proprietors alone; a result attributed to the influence, in part, of the Delancey family, who were interested in the Minisink patent. The same influence, it is said, led to instructions from the Speaker of the Assembly to the agent, urging a hearing before the Board of Trade, in preference to the appointment of a commissioner, unless the New Jersey Proprietors would recede from their claims and be satisfied with a line drawn from the 41st degree on the Hudson to the "Head of Delaware Bay," which is at Reedy Island." In that case they would graciously consent to the appointment of a commission,—“to see the line run.”* One cause for the neglect of a matter bearing so directly upon the prosperity of a large portion of both provinces, may perhaps be found in the fact that the riots and disturbances in New Jersey, which prevailed so extensively during the administration of Governor Belcher, were engrossing much of the attention of both the provincial government and the Crown officers, and a suggestion had been made, originating apparently with Mr. Paris, that the junction of the two provinces in one government might restore peace; this may have been considered a panacea also for the boundary difficulties, and cause them to be put aside, at least until the suppression of the riots had been thoroughly effected.

At last, the parties seem to have aroused from their lethargy. On the 2d December, 1752, Mr. Paris desired the Board of Trade to fix a day for the consideration of the bill, but not until 7th June, 1753, was his request acceded to. On the 4th of July following, the determination of the Board was probably arrived at, as the two agents were summoned to attend the sitting of that day; and on 18th July they submitted to the King in Council an opinion adverse to the wishes of New Jersey, inasmuch as the bill was *ex-parte* in its character, and could not be considered authorized by any prior co-operation on the part of New York, as those transactions were never properly warranted by the Crown, nor could its interests be bound by proceedings so authorized; losing sight entirely of their previous action in approving the acts of both provinces, directing the running of the line in 1719. They ignored Governor Clinton's views completely as to the

* Smith, II., pp. 133-134. "Reedy Island," be it observed, lying in about 39 deg. 5 min. N.

Crown's having no interest in the matter, for they say, "We think with respect to Quit Rents and Escheats, the situation of the two provinces makes a material alteration; for though the province of New Jersey is not under regulations either of propriety or charter with respect to its government, yet it is a Propriety Province with respect to the grant and tenure of its Territory; and consequently, as New York is not in that predicament, the determination of the Boundary in prejudice to that province will affect the Interest of the Crown, with respect to the tenure of such lands as are conceived in this question; it being evident that whatever districts are supposed to be immediately held of the Crown in New York, by being supposed to be included in the limits of the province of New Jersey, will immediately pass to the Proprietors of that Province, and be held of them; by which means the Crown will be deprived of its Escheats and the Quit Rents pass into other hands."*

By disapproving thus of the previous action of Gov. Hunter and the two Legislatures in relation to the line of 1719, they materially hindered the fulfilment of the agreement entered into in relation to it, and strengthened the New York claimants in their opposition to its provisions. The formal repeal or disapproval of the act was not, however, promulgated for several months thereafter. On 4th August the New York agent notified Mr. Paris of his intention to move for it, and we find the latter, on the 18th August, complaining of the insufficiency of the materials in his possession to insure success in resisting the repeal which would come up for final action in October or November following. It is somewhat singular that neither the act, nor the fact of its repeal, is mentioned in Nevill's Laws.

In 1753, (May) the population of that part of the province having materially increased, the county of Sussex was set off from Morris; and the consequent closer proximity of courts and legal functionaries, of tax assessors and collectors, appears to have occasioned more frequent collisions with such of the inhabitants of the contested district as were disposed to resist the operation of New Jersey laws. Finding that there was no prospect of bringing New York to a final settlement of the line very soon, being as little likely to approve of a commission for the purpose as they had been of the act which had been passed by the New Jersey Assembly, Mr. Alexander, in a letter to Mr. Paris of Dec. 21st, 1753, suggested the propriety of having the line run in 1719 designated as a temporary *Line of Jurisdiction*, until a final settlement could be effected—a similar proposition having been also presented to Governor Belcher on 20th November preceding—and in March, 1754, Robert Hunter Morris enclosed it to the Board of Trade, and urged their approval of the measure.

Every step taken then, as was the case in subsequent Boundary disputes, calculated to hasten the desired result, seems to have originated with New Jersey, and to have been earnestly and considerably pressed upon

* N. Y. Col. Doc'ts., Vol. VI. p. 775.

the attention of New York. Thus this proposition for a temporary Line of Jurisdiction was at once communicated by Gov. Belcher to Lt. Gov. Delancey of New York, and by him laid before his Council. The Committee to whom the matter was referred, recommended, very willingly, the establishment of such a line, but instead of adopting that of 1719, they wished the Lieut. Governor to secure the designation of a line said, by them, to have been fixed in 1686,* but which the New Jersey commissioners, in 1769, asserted was now for the first time claimed by New York for the true line. Lieut. Gov. Delancey, however, conceded that the line on the Delaware might be carried up to the lower forks or junction of the Delaware with the Mackhackinack, instead of terminating at Minisink Island; his argument for not allowing it to extend to 41 deg. 40 min. being stated by himself in a letter to the Lord of Trade, thus: "As for these words," which is in forty-one degrees and forty minutes of latitude, "I do not take them to be part of the description of the Boundary; they are only affirmative words of computation, or rather conjecture of the latitude wherein the northernmost branch on the Forks of Delaware lye. For instance, if a grant was made of all the lands from London Bridge to Greenwich, *which is ten miles*; here the mistaken computation made of the distance, will not carry the grant beyond Greenwich. London Bridge being the terminus a quo, the place whence, and Greenwich the terminus ad quem, the place to which; and these two make the extent of the grant, and are always understood to be exclusive. So of the western boundary of Jersey, the main Ocean at Cape May at the mouth of Delaware Bay, is the terminus a quo, and the northernmost branch of the said Bay or the River of Delaware, is the terminus ad quem, which make the extent of the Jersey grant on the West."†

The Lieut. Governor evidently lost sight of the fact that by ignoring the limitation of the given latitude, his "terminus ad quem" could only be found at the mouth of the Popaxtun branch, as no geographer can deny the "northernmost branch" of the Delaware must be either that or the Mohawk.

The action of Lieut. Gov. Delancey's Council was sustained by the Assembly, and during the year several spicy communications passed between the authorities of the two provinces respecting the merits of the different lines, in which considerable crimination and recrimination were indulged in; Governor Belcher being accused of "impertinence and indecency," and of "unwarrantable liberties" in his manner of conducting the discussion; and one may almost imagine he is reading a new version of the fable of the wolf and the lamb, when he is told of the "forbearance" of New

* Minutes N. Y. Assembly, Oct. 29, 1754. See Line No. 6 on map.

† N. Y. Col. Docts., Vol. VI., p. 839.

York, "notwithstanding the many insults offered to it by the Province of New Jersey."*

It appears from a formal report made to the New York Assembly October 29th of the same year, (1754) that the New Jersey people, tired of awaiting the tardy movements of the New York Legislature, had pretty effectually sustained their rights by the exercise of might. After referring to several evils and indignities submitted to, the report states that "His Majesty's Justices of the Peace and other subordinate officers and ministers, in and for Orange County, have been repeatedly beaten, insulted, prevented in the execution of their respective offices, taken Prisoners and carried into parts of New Jersey remote from their habitations and the opportunity of being relieved, and have been thrown into jail, and held to excessive bail and prosecuted by indictment."† "Some of them," (the inhabitants of Orange County) says the same document, "have been obliged to desert their possessions, while a few, more resolute than the rest, are reduced to the necessity of converting their dwellings into places of defence, and go armed for fear of some sudden attack," and they referred particularly to the case of Thomas Dekay, Colonel of the Militia, and a Justice of the Peace of Orange County, whose plantations were claimed by the New Jersey Proprietors, as having his life threatened in his own house by armed men, and as being told by Mr. Alexander that he could only be assured of a quiet possession on his agreeing to hold his lands under New Jersey, become a Jerseyman, and fight (as he expressed it) for New Jersey against the New York people.‡ Numerous affidavits relating to similar transactions—and particularly to the arrest of Jacobus Swartwout—a New York Justice, who had made himself very obnoxious—"on the Sabbath day at the church at Mackhackimack, at Minisink, being at least ten miles from the lower end of little Minisink island," are to be found in the New York records,§ and on the other side we have accounts of outrages committed by Colonel Dekay himself, in previous years,|| of irruptions made by the people of New York into New Jersey, during which one or more houses were burnt, and of persons ousted of their possessions by lawless aggressors. These counter statements were of course transmitted to the authorities in England, and it is not surprising that, while subjected to the slow process of examination and adjudication by Committees and Boards, the parties immediately interested should have despaired of any peaceful settlement; or that Governor Belcher, on 26th November,

* See "Two Reports of a Committee of His Majesty's Council for the Province of New York relating to the Controverted line between the Province and New Jersey, March 18th and Dec. 17th, 1754."

† Minutes of Assembly, II., p. 394.

‡ The line, as finally settled, passed to the northward of Col. Dekay's location.

§ "Two Reports, &c."

Boundary Papers, No. 133.

should have thought it necessary to urge the issuing of such orders from the King, as might prevent bloodshed, which these conflicts threatened to produce. Months, however, rolled away, with not a single efficient measure being adopted, and we find James Alexander, on 2d July, 1755, expressing his belief that no speedy settlement of the controversy could be expected, and feelingly suggesting to Mr. Paris that, as they were both "getting advanced in years," they should be instructing others in its history, and preparing them to conduct it aright. His son William, afterwards known as Lord Stirling, and Robert Hunter Morris, had already, in a great degree, taken his place, and Mr. Paris was requested to look out a competent gentlemen to act as his substitute, should occasion require. Mr. Alexander died in the spring of 1756, and in him the province lost one of its most intelligent, patriotic, and useful citizens, to whose abilities and services justice has yet to be done in the preparation of a suitable Memoir, for which there are abundant materials.

During the period covering these events, the "Circumlocution Office," whose functionaries are ever striving "how not to do it," which Dickens has so graphically portrayed, seems to have been located on the premises of the Board of Trade, for notwithstanding all the appeals from New Jersey it was not until the 12th August, 1755, that any action took place, and then nothing but simple instructions issued from Whitehall, to the effect that New York should do, what the Proprietors of East Jersey were willing to do, provide for its proportion of the expenses of a Joint Commission: an act passed by the New York Assembly in 1754, submitting the matters in dispute to the King solely, being at the same time repealed. This act originated in what Smith terms "an obstinate attachment to the opinion that the stations from and to which the dividing line was to run were clear;" or, which is the most probable conjecture, with a design "to protract the controversy."*

The instructions from Whitehall were laid before the New York Assembly on 8th January following (1756,) and resulted in a barren act providing for the sale of enough land in the Minisink and Waywayanda Patents to raise the amount; a measure against which the patentees strongly and at great length remonstrated, in a memorial submitted to the Assembly on 13th February, 1756—which may be taken as a full exposition of the merits of their claim†—asserting the propriety of making the expense a public charge upon the whole province as contemplated in previous years. Their disinclination to meet the requirements of the act rendered it of course inoperative. Again, on the 1st September, did Governor Belcher complain to the authorities in England, and so manifest was the remissness of New York, that on the 24th November the Council referred to the Board of

* Smith, II., p. 201.

† Printed in Minutes of Assembly, II. p. 525.

Trade for action, the memorial of the East Jersey Proprietors, asking for the establishment of the line of 1719 as one of temporary jurisdiction. A hearing was appointed on the 21st December, and I may be permitted to introduce here an extract from a letter of William Alexander to Robert Hunter Morris, in my possession, which gives the results of the proceedings. Writing from London, Feb. 12, 1757, he says.

“We expected to meet with the long practised opposition and evasions on the part of New York, and therefore prepared for them by determining to make our offers so ample and fair as to put it out of their power to make any objections to the doing something or other effectual. After reading over the petition, and proving the delivery of a copy of it to the President of the Council of New York, we told their Lordships that if they had any objections to the granting the prayer of the petition for a temporary line, and chose rather to have the matter determined by a Commission for running the final line; and as the only objection that now remained to the issuing such Commission was, that the Province of New York had not provided for their moiety of the expense, we would advance the money necessary for the whole expense of suing out the Commission and carrying it into execution, provided their Lordships would advise that in the Commission it might be ordered that the Commissioners should award one-half of the expense to be paid by the Province of New York to the Proprietors of East Jersey. This we thought we might venture to offer, rather than leave them the least pretence for any further delay; and it had the effect we wished; for it convinced their Lordships that the Proprietors were honestly disposed to put an end to the contest.”

In this connection it may be remarked that not only, as stated by Mr. Alexander, were the Proprietors honestly disposed to put an end to the contest, but that every exertion was constantly being made to bring it to a close; and, what is still more creditable, admitted behind the scenes as I have been, having in my hands the correspondence of all the prominent actors on the part of New Jersey, I can confidently assert that, not a measure was proposed nor a step taken which was not entirely honorable and manly; as they aimed only at what was right, there has not come under my notice a remark or a suggestion intimating a desire on the part of the Proprietors to pursue any course not sanctioned by justice and equity.

Although Mr. Charles, the New York agent, endeavored to get the Board “not to do it” for a while longer, he was unsuccessful in postponing their report beyond the 27th January, 1757, when they recommended the establishment of the line asked for by the East Jersey Proprietors, but gave New York six months time to provide for the expense of settling the final line, before the temporary one of jurisdiction should take effect. By this arrangement parties in actual possession were not to be disturbed by the claims of either province, and vacant lands north or south of the line were allowed to be granted by the Governor of New York or the East Jer-

sey Proprietors, according to their location—the rents and profits to be subsequently accounted for to whichever party should have the tracts on a final settlement.*

But the six months were allowed to pass, and were followed by five years more of supineness and indifference on the part of New York; but the attention of a new Governor, Robert Monckton, was drawn to the subject, and its importance being recognized, he brought it before the Assembly in December, 1762, and secured the passage of a Bill for submitting the controversy “to such a method of settlement as His Most Gracious Majesty shall by his royal commission think proper to appoint;” the Patentees of Waywayanda and Minisink agreeing to pay whatever expenses might be incurred over £1,500. This was responded to by the Assembly of New Jersey at their next session the following June by the passage of an act intended to effect the same end, but owing to some objections which do not appear, it failed to receive the royal approbation, and another one was passed February 23d, 1764,†—was approved—and the matter commenced once more the circuitous and dilatory course of the “Circumlocution Offices” in England: remaining involved in their labyrinths until October, 1767, on the 7th of which month the long contemplated Commission issued under the privy seal.

It is not known whether the privilege was accorded to any of the parties in interest to designate the Commissioners; there are some intimations, however, in the letters of Mr. Paris, that the East Jersey Proprietors remonstrated in advance against the selection of certain persons. The following gentlemen were named in the writ:

Charles Stewart, John Temple, and Peter Randolph, Surveyors General of the Customs for the District of Quebec and of the Northern and Southern Districts of America respectively. *Andrew Elliot*, Receiver General of the Quit Rents in the Province of New York. *Chambers Russell*, Judge of the Court of Vice Admiralty for the Province of Massachusetts. *William Allen*, Chief-Justice of Pennsylvania. *Samuel Holland* and *William De Brahm*, Surveyors General of Lands for the Northern and Southern Districts of America. *Andrew Oliver*, Secretary of the Province of Massachusetts. *Charles Morris*, Surveyor of Lands and one of the Councils of Nova Scotia. *Payton Randolph*, Attorney General and one of the Council of Virginia. *Benjamin Franklin*, of the Province of Pennsylvania, and *Jared Ingersoll*, of the Colony of Connecticut—any five of whom were clothed with power to examine witnesses and adjudicate the case, subject to the confirmation of His Majesty in Council—provided no appeal from their decision should be entered before them at a subsequent meeting, which they were authorized to hold, two months, at least, but not to exceed three months, after the promulgation of their decision.

* Whitehead MSS., Vol. III., No. 112. Boundary Papers, No. 124. Smith's N. Y., II., p. 249.

† Allinson, 254, 262.

Still there must be delay—and nearly two years more passed away before the first meeting of the Commissioners, which was held the 18th of July, 1769. The place of meeting was the room used for the sittings of the Chamber of Commerce in New York in the Exchange, which was built on arches at the foot of Broad street, in a line with Water street, and it will add to our interest in the matters there discussed, to summon before our mental vision some of the men who might have been seen in and about that room while the investigation was pending—men who, from their distinguished character, their different political and social affinities and subsequent careers, (so little foreseen by any of them) are well worthy of notice.

The Commissioners in attendance were six in number, Messrs. Stewart, Morris, Elliot, Holland, Oliver, and Ingersoll; all of note in the Colonies.

Mr. Elliot, the Collector of the Customs and Receiver of the Quit Rents in New York, was the third son of Sir Gilbert Elliot, Lord Chief-Justice Clerk of Scotland, and uncle of the first Earl of Minto. He was highly esteemed for his business talents, intelligence, and worth. Major Holland had been for some years Surveyor General of the Northern Colonies, and at this time, or shortly after, was engaged in a survey of the Atlantic Coast, and continued so employed until the progress of the Revolution prevented the further prosecution of all undertakings of such a character. His maps, it is said, were used by Des Barres in the compilation of his celebrated charts of the American Coast. One in my possession, published about 1760, entitled, "The Provinces of New York and New Jersey; with part of Pennsylvania, and Governments of Trois Rivières and Montreal," is remarkably correct for the time, and shows some of the lines referred to in the discussions between New Jersey and New York.

Messrs. Ingersoll and Oliver had both been sufferers from a previous manifestation of royal confidence, having incurred the popular displeasure by accepting the thankless office of Stamp Distributor in their respective provinces. Mr. Oliver was born in Boston, graduated at Harvard in 1724, and obtained celebrity as a Representative and Counsellor. At this time he was about sixty-two years of age. It was while filling the office of Secretary of the Province in 1765 that he was appointed Stamp Distributor for Massachusetts, but his place of business being assaulted and demolished by the mob, he was obliged to resign. Subsequently, under the supposition that he was seeking to be restored, he was not only required to publish a declaration that he would not perform the duties of the office, but also to appear publicly under the Liberty Tree, and in the presence of two thousand persons, solemnly swear that he would not directly or indirectly enforce the act. His coadjutor, Ingersoll, was considerably younger, being in his forty-seventh year. He was a graduate of Yale in 1742, and was in England as agent of Connecticut when he received the appointment under the Stamp Act. He arrived at Boston on his way to Connecticut in August, 1765. Remaining there a short time, his approach became

known to the good people of his native province, and public sentiment ran so strongly against him that threats of even personal violence were indulged in. These, however, resulted only in his being tried and condemned to be burned, in effigy—an intimation which Mr. Ingersoll very wisely heeded and resigned his office; but, as in the case of Mr. Oliver, this did not satisfy the patriots of the day, who extorted from him in public an explicit declaration of his intentions, together with shouts, thrice repeated, of "Liberty and Property."

Associated with the Commissioners, as their Secretary, was the youthful John Jay, then in his twenty-fourth year, who had just been admitted to the Bar. He had already manifested those qualities which were destined to secure for him in after years an enviable distinction among the distinguished jurists and statesmen of the country—a distinction which in all the true elements of greatness was surpassed by few. He probably owed his appointment to the fact that his legal preceptor, Benjamin Kissam—whom he was wont to consider "one of the best men he ever knew," was associated with the New York agents as one of their counsel—a similar position with the New Jersey agents being filled by Samuel Jones,—the father of the late Chief-Justice Jones of New York,—in reference to whom Mr. Jay says, in one of his letters, "I wish there were many such men among us; they would reduce things to just principles."

The claims of New York were presented by Henry Holland, who had held several important posts in the Province—Frederick Philipse, the head of one of the leading families, John Morin Scot, William Bayard, and John Cruger—the last three being the prominent participants in the proceedings. All three had been identified with the interests of the colonies in the events which had up to this time disturbed the relations between them and the mother country, and Cruger, as Mayor of the city, had taken into his possession the obnoxious stamp papers in 1765. Both he and Bayard had been active members of the first American Congress held in that year, and Cruger drew up the Declaration of Rights and Grievances put forth by that body. There must have been, therefore, a wide difference between their political views and those of the Commissioners, Oliver and Ingersoll, before whom they appeared. Cruger was then, and had been for ten years, a member of the New York Assembly, and held the office of Speaker from 1769 to 1776; and Mr. Bayard was one of the most prominent citizens. Mr. Scot had been associated with William Livingston in editing the "Independent Reflector," which in 1752 and 1753 did so much to expose and correct existing abuses of government and corruption of individuals; and also aided in the preparation of other papers which exercised no inconsiderable influence in the formation of that public sentiment, which subsequently proved so irresistible in overcoming the prejudices for royalty. He was connected with every enterprise looking to the intellectual improvement of the people, and at this time was an eminent member of the New York Bar. It was from his pen that the long memo-

rial proceeded, which was presented to the New York Assembly in 1756; and which pointed him out as one peculiarly qualified to sustain the interest of New York before the Commissioners.

The claims of New Jersey were confided to John Stevens, James Parker, Walter Rutherford, Henry Cuyler, and William Donaldson, but the last two are thought not to have attended in person. The positions of the other three in our local annals are too well known to require special notice.

The conducting of the case seems to have devolved for the most part upon Mr. Parker, whose letters, briefs, and memoranda which are in my possession, all evince a thorough acquaintance with the subject, and the most untiring devotion to the interests of the province. He was ably seconded by his coadjutors and Lord Stirling—distinguished for his mathematical abilities—in all matters connected with the practical questions at issue, and having as legal advisers Benjamin Chew of Philadelphia, David Ogden of Newark, Richard Stockton of Princeton, and Cortlandt Skinner of Perth Amboy, though they seem to have been irregular in their attendance; Mr. Jones, before referred to, being the counsel most generally present.

It must be conceded, that the names I have thus given present in themselves conclusive evidence that, so far as numbers and ability, official station and social position, were requisites to ensure a just decision, those to whom were entrusted the adjustment of the controverted matters, possessed them all to a remarkable degree. But before proceeding to notice their proceedings, we may allow ourselves to anticipate the events of a few years, and dwell briefly upon the checkered fortunes and varied fields of action of those who were then in such close and constant intercourse.

Of the sitting Commissioners, Oliver, although estimable in all his private relations, became exceedingly obnoxious to the patriots of Massachusetts from his adherence to the royal cause, and sinking under the anxieties and disquietudes of the earlier years of the revolution, died in 1774. Elliot sided also with the royalists, and continued to hold various important trusts in New York so long as the British army retained possession; then retired for a season to Perth Amboy, but eventually, as did also Holland, had to submit to expatriation and the confiscation of his property. Ingersoll appears to have been taught prudence by his experience as Stamp Distributor, so that, on the suspension of his duties as Judge of Vice Admiralty, to which he was appointed soon after sitting upon the Boundary Commission and which had caused his removal to Philadelphia, he returned to Connecticut and so carefully guarded his conduct as to excite no ill feeling toward him, and died there in 1781. The other two, Stewart and Morris, residing respectively in Canada and Nova Scotia, were not affected by the disruption of the ties which had bound the other colonies to England. Their youthful Secretary, Jay, soon identified himself with the cause of America, and his upright and consistent course in every relation, public and private, so won the confidence and esteem of his countrymen,

that we find him filling many of the most exalted offices in their gift, and among them that of a negotiator, to settle—not the comparatively insignificant disputes of adjoining land owners, but—the conflicting rights and privileges of nations; his services as Minister at the Courts of St. Cloud and St. James being eminently worthy of commendation.

Of the New York agents, Messrs. Bayard, Phillipse and Cruger were among those who, however disposed at first to act in opposition to the encroachments upon the liberties of the colonists, were eventually led to connect themselves with the royalists, the first two seeking safety abroad, their property being confiscated to the State of New York, and Mr. Cruger retiring to Kinderhook, where he died in 1792. Among those who represented the interests of New Jersey as agents and counsel, there proved to be many different shades of opinion as the progress of events obliged them to decide upon the rival claims of England and America to their loyalty. Mr. Stevens became an active participator in the proceedings of Committees and Councils in New Jersey, while Messrs. Parker and Rutherford observed a strict neutrality; but, notwithstanding the close intimacy existing between them and the prominent Whigs of the day, so little were private friendships allowed to interfere with public duties, that not having taken the oaths of allegiance, they both suffered confinement for several months at Morristown in consequence of the treatment received in New York by two Jerseymen, (Messrs. Fell and Van Zandt) who had fallen into the hands of the royalists. A somewhat similar experience was that of Mr. Chew, who was sent a prisoner to Virginia, in consequence of his refusal to take the required oaths. Mr. Skinner, as is well known, fled the province and became a Major General of the Royal Volunteers, although at first an earnest opponent of those measures of the Crown which led to hostilities; while on the other hand, Wm. Alexander, Lord Stirling, adopted the colonial cause, and became a Major General of the Continental forces. David Ogden, of whom Mr. Field has given an interesting sketch in his "Provincial Courts and Bar," abandoned the country and returned not until 1790, while Richard Stockton boldly enrolled himself among those who pledged to each other "their lives, their fortunes, and their sacred honor," in defence of American liberty.

We pass now to a consideration of the proceedings of the Commissioners. Care was taken by the New Jersey agents prior to the sitting of the Board to have a traverse made of the Delaware River and Musconetcong Branch, the first by Anthony Dennis and the other by Thomas Milledge—experienced Surveyors both—the work of the former especially, in the language of Lord Stirling, giving "great satisfaction," going "greatly," he says, "to prove that the fork laid down in 41 deg. 40 min. in the Dutch Maps is the upper fork, and not above sixteen miles to the north of the latitude;" and a thorough examination of records, grants, and maps brought together a vast amount of evidence that seemed irresistibly conclusive, and from a remark in one of Mr. Chew's letters was thought to have produced

a due impression upon the agents of New York. "I am glad," he wrote to Mr. Parker, June 15th, 1769, "to hear your adversaries are bewildered. The Lord confound their politics, and enlighten and remove all partiality and undue influence from the hearts of your judges. Amen."

The New York claimants were also on the alert, and had procured various surveys and maps relating to the points upon which they based their arguments. These surveys, with those made under the authority of the New Jersey agents, were properly verified, and by direction of the Commissioners—who at this stage of the proceedings were said to have been "very indulgent and exceeding desirous of promoting any measure that had the least tendency to do either party justice,"—were incorporated in one general map, which was to be further corrected by new observations of the latitude on both rivers, by running the line of 1719 and a line "from a place on Hudson's River due west of the lower Yonker's Mills, to the lower end of Minisink Island," being the line asserted by the New York parties as having been agreed upon in 1686—the dwelling-houses, mills, iron works, &c., within the controverted limits to be particularly designated on the map. It is presumed that this map was constructed, but whether now in existence or not, has not been ascertained. From the details it must have contained, it would be a valuable acquisition, could it be found.

To determine the latitude with precision, the agents of both provinces united in securing the services of Mr. David Rittenhouse of Philadelphia, who has been called the Newton of America. He was then in his thirty-seventh year, and had gained such celebrity for his mathematical and astronomical attainments as to be selected by the American Philosophical Society to observe the transit of Venus which, occurred on the 3d June of that year. "I am glad that Mr. Rittenhouse has undertaken this," wrote the Rev. William Smith to Mr. Parker, "for a man of equal abilities can scarce be got, and none of superior on this continent. * * * Let not his modesty prejudice, for it covers worth and abilities of a very superior kind." Mr. Rittenhouse joined the corps of surveyors about the middle of August, bringing with him from Philadelphia the Sextant and Time-piece belonging to the Proprietors of Pennsylvania in order to facilitate and verify the various observations. Associated with him was also Captain John Montresor, a distinguished Engineer, who served under General Braddock, and was an ensign in his famous expedition. He had quitted the army, however, in 1766.* During the revolution he made drawings of several of the positions occupied by the hostile armies around Boston and elsewhere, which were, a few years since, in the possession of the late Ithiel Town.

Anthony Dennis and James Clinton were appointed to run the line of

* The Chamber of Commerce of New York profited by the presence of Messrs. Rittenhouse and Montresor to have the latitude of the Battery ascertained, they reported to the Chamber on 7th November that they made it 40 deg. 42 min. 8 sec. North.—*Mr. King's History of the Chamber of Commerce*, p. 54.

1686, but on commencing the work on 15th August, they were encountered by a large body of men with clubs, and obliged to relinquish the undertaking; but the New Jersey agents having applied for, and obtained from Governor Franklin, a proclamation warning all persons against molesting them, they resumed their labors on the 21st, and their field-notes for about twenty miles, or more than two-fifths of the distance across, are in my possession, giving the names of the parties then residing in that region, and other interesting facts.

It was remarked that, although the New York agents had earnestly requested that this line might be run, yet, when it was undertaken, they threw various obstacles in the way, as it was found on examination that no occupancy under New York titles could be found within a mile and a half of the line—a fact which they had no desire to establish. There were several collateral discussions had, as to the mode of calculating the latitude—the number of miles in a degree—the possibility of the branch of the Delaware at Easton, or the Lehigh, being the branch intended in the grant—and other points, which it would unnecessarily prolong this paper to refer to more particularly.

The Commissioners continued in session while the surveys were being made, for the purpose of examining documents and receiving oral testimony; and Messrs. Rutherford and Stevens being absent, employed in collecting evidence, the whole weight of the examination on the part of New Jersey rested upon Mr. Parker, assisted by Mr. Jones; and in a letter to Messrs. Ogden, Stockton, and Skinner, the other counsel, Mr. Parker, under date of Sept. 3d, expresses his anxiety and apprehensions as to the result unless they give their personal attendance, as was expected. He says: "The business of this week will chiefly be to examine witnesses on both sides of the question, the minuting of which and the drawing the interrogatories on our side the question, and the cross interrogatories for the witnesses produced on the other side, will be so considerable a work that it is impossible for him [Mr. Jones] with my assistance to execute it, and what the consequence of a defect in so material a point will be I leave you to determine. They intend to go into evidence of an extraordinary nature, and such as requires the assistance of Council to oppose."

All the testimony having been received, Messrs. Stevens, Parker, and Rutherford, on the 28th September, submitted their Brief of the claim on the part of New Jersey—a document which reviews in a masterly manner every pretension advanced by the agents of New York, in refutation of the line agreed upon in 1719; every point being taken up and discussed fully, with reference to the various patents, grants, and surveys, making, as printed, forty-four folio pages. The copy in my possession is the only one I have ever seen, and I know of no other; and after a careful examination of its arguments and verification of not a few of its statements by a reference to the original authorities, I cannot conceive how the Commissioners could have arrived at the following decision—just two years after their ap-

pointment. It seems to be based upon no principle save that of accommodation to the claims of New York. I read from a contemporaneous certified copy, which appears to be in the hand-writing of Mr. Jay. The document has never, to my knowledge, been in print.

“AT A MEETING of the Commissioners appointed by his most Gracious Majesty’s Commission to Settle the Boundary Line between the Colonies of New York and New Jersey held at the Long Room Called the Chamber of Commerce in the City of New York, the 7th day of October, 1769,

PRESENT.

Charles Stewart, Esq., President,
Andrew Elliot, Esq.
Samuel Holland, Esq.
Andrew Oliver, Esq.
Charles Morris, Esq.
Jared Ingersoll, Esq.

“THE AGENTS on the part of both Colonies, having offered to the Court all that they thought necessary or proper in Support of their respective Claims, and the Court having Considered the Same, Do FIND

“THAT King Charles the Second by his Letters patent bearing date the twelfth day of March, 1664, did Grant and Convey to his Brother the Duke of York, All that Tract of Country and Territory now Called the Colonies of New York and New Jersey; and that the said Duke of York afterwards by his Deed of Lease and Release bearing Date the 23d and 24th Days of June, 1665, did Grant and Convey to Lord Berkley of Stratton and Sir George Carteret, that part of the Aforesaid Tract of Land Called New Jersey. The Northern Bounds of which in said Deed are described to be “to the northward as far as the Northernmost Branch of the said Bay or River of Delaware which is in 41 deg. 40 min. of Latitude and Crosseth thence in a Straight Line to Hudson’s River in 41 deg. of Latitude.”

“We further find among the many Exhibits a Certain Map compiled by Nicholas John Vischer, and published not long before the aforesaid Grant from the Duke of York, which we have reason to believe was Esteemed the most Correct Map of that Country at the Time of the said Grant, on which Map is Laid down a Fork or Branching of the River then Called Zuydt River or South River now Delaware River in the Latitude of 41 deg. and 40 min., which Branch we Cannot doubt was the Branch in the Deed from the Duke of York called the Northernmost Branch of the said River, and which in the Deed is said to lye in the Latitude of 41 deg. and 40 min. And from a Carefull Comparison of the several Parts and Places Laid down on the said Map, some of which, more Especially towards the Sea Coast and on Hudson’s River We have Reason to believe were at that time well Known. The Distance of the said Branch from the Sea Shore

on the South,* and the Relative situation of the same with regard to other places and the Lines of Latitude as they appear to be laid down on the said Map at that and other places in the Inland Country: We are of opinion that the said Branch so laid down on the said Map is the Fork or Branch formed by the Junction of the Stream or Water Called the Mahackamack with the River Called Delaware or Fishkill and that the same is the Branch Intended and referred to in the before mentioned Deed from the Duke of York, as the Northern Station at the River Delaware, which Fork or Branch We find by an observation taken by the Surveyors appointed by the Court, to be in the Latitude of 41 deg. 21 min. and 37 seconds.

"We are further of opinion that the Northern Station at Hudson's River being by the Words of the said Deed from the Duke of York, Expressly Limited to the Latitude of 41 deg. should be fixed in that Latitude, which Latitude we have caused to be taken in the best manner by the Surveyors appointed by the Court, and which falls at a Rock on the West Side of Hudson's River marked by the said surveyors, being 79 Chains and 27 Links to the Southward on a Meridian from Sneydon's House, formerly Corbet's.

"IT IS THEREFORE the final Determination of the Court That the Boundary or Partition Line between the said Colonies of New York and New Jer-

* This argument, upon the soundness of which the decision rests, making the extension of New Jersey, north, to depend upon what was very gratuitously taken to be the views of the parties as to the position of Cape May and Sandy Hook, is thus adverted to in the Brief of the New Jersey Agents. I have not thought it necessary to urge anything further to show its fallacy:

"The Agents for New Jersey do also observe, that the Duke of York, who, from his office of Lord High Admiral, must be supposed to have been well acquainted with every branch of mathematics, and was himself a good seaman, could not have been ignorant of latitudes. To say that he meant or intended any particular place, or had any particular number of Miles in view for a degree of latitude, is absurd; because nothing is offered to support it, and the Deeds shown prove the Contrary; had the Duke intended any certain place on Hudson's River, he would undoubtedly have mentioned it; but giving a certain latitude for the beginning of the line on that River, it cannot be presumed but that he meant the beginning should be wherever that latitude in truth was. To suppose, that the place of that latitude was by him determined from the then known latitude of the Capes, or Sandy Hook, or any other place, is supposing what not one of the deeds, or any rational construction of them or other evidence, will warrant. No place is mentioned except Cape May, which was to be the southern boundary, not described by any latitude, but as a Cape: it follows, therefore, that, if the situation of the Cape had been a Degree further North or South, than it actually is; yet it could not affect the stations we contend for, as they are fixed independent of it or any other place whatsoever. To suppose that the Duke knew the latitude of the Cape, and that he from thence determined the latitudes on the Rivers, computing sixty miles of 90 chains in a mile to a degree; is supposing more absurdly. * * * The Duke well knew, that limiting his grant by Degrees of Latitude, was more determinate than any other Boundary he could give: and as the Latitudes are given, we cannot think that any other mensuration can ever be admitted."—*Brief*, p. 11.

sey be a direct and straight Line from the said Fork at the Mouth of the River Mahackimack in the Latitude of forty-one Degrees twenty-one Minutes and thirty-seven Seconds to Hudson's River at the said Rock in the Latitude of forty-one degrees as above described.

“(Signed) Cha. Stewart,
Andrew Elliot,
Andrew Oliver,
Jared Ingersoll.”

“Samuel Holland and Charles Morris, Esquires, two of the of the members of the Court not Concurring in a part of the foregoing determination, viz., That part respecting the Station at Hudson's River, desired to have their Reasons for such their Dissent entered on the Minutes of our Proceedings, which was allowed and they are as follows :

“THE Northern Boundary of the province of New Jersey is the matter Submitted to our Consideration and to Ascertain the Extremities of the Partition Line upon Hudson's and Delaware Rivers.

“In doing this We are to proceed upon Principles of Justice and Equity, having respect to the Proofs. This we apprehend to be [the] Language and Intent of [our] Commission and It is Necessary It should be so because the Country was but little known at the Time The Grants to the Duke of York were made, and We must of necessity have recourse to the ancient Maps which were in being at Time of making these Grants.

“It is difficult to ascertain with precision what Lands passed to the Duke of York by his Grant, Either from the Express Words of the Grant or by any Maps of the Country that appear to us to have been then extant. Nor is it probable That the Duke or his Grantees were better Informed when He Conveyed New Jersey to Berkley and Carteret; the best Lights We have on this Matter are the Maps of Vischer.

“The Words relative to the Latitude in the Grants to Berkley and Carteret are words of Description concerning the Northernmost Branch of Delaware, and We do not find upon Inquiry any Branch in the Latitude mentioned. A Branch nevertheless Seems to be Intended. The Branch nigh to that Latitude is Mahackamack and which, from a View of this Ancient Map we are Induced to believe was the North Partition point intended by the Parties, and think in Justice and Equity ought to be so determined, because a Line from Hudson's River to the Branch at Easton, claimed on the part of New York, or to that of the Poughpaxtonk and Mohawk Branches claimed by New Jersey, would Involve many of his Majesty's subjects in Absolute Ruin who hold respectively under Each Government.

“It is therefore upon this principle The Point on Hudson's River we apprehend ought also to be fixed, for as It appears by Vischer's Map that the Latitude of forty-one on Hudson's River, which Map We apprehend

was the Guide and direction to the Duke in forming his Grants to Berkley and Carteret. This Map, ascertains the Latitude of forty-one on the upper part of the Manhattan's Island.

"If the Country therefore was vacant we should not Hesitate in Declaring that the Latitude of forty-one as laid down in the ancient Maps would in Equity be the Station on Hudson's River, and more Especially because We have had abundant Experience in our own Departments to Observe that the Ancient Geographers find their Latitudes in these parts of the Continent Several Miles more Southerly than are found to be by more modern Observations. In Tenderness therefore to the New Jersey Settlers We are Inclined to a more Northern Station and in settling the place where, Consider that before the Contested Territory was planted, a Place due West of Frederick Phillips Mills gained the Reputation as the Station Point upon Hudson's River, and a Line from this Station which appears to be anciently fixed by the Governments concerned will be the Least detrimental to the Settlers, and one more Northerly will Comprehend many Farms in a populous Neighborhood held under New York by ancient Patents. We Cannot help being of Opinion That a Line thence to the Mahackamaek Branch will be the most Just and Equitable of any We can fix upon agreeable to the design of the royal Commission which We imagine will be most Conformable to his Majesty's Gracious Intentions to his Subjects in both Provinces."

"(Signed) Samuel Holland,
Charles Morris."

"The aforewritten is a true Copy of the Original Enters. Ex^d by
(Signed) John Jay, Clk."

This remarkable decree which fixed the point in controversy, neither at the northernmost branch of the Delaware nor in the latitude of 41 deg. 40 min., but at the junction of the Mackhackimaek with the Delaware in latitude 41 deg. 21 min. 37 sec., did not satisfy either party. The agents of New York objected to both stations as being too far north, and the New Jersey Proprietors to the station on the Delaware, as too far south, throwing between 150,000 and 200,000 acres into New York, four-fifths of which, at least, were actually held under grants from them;—and the 8th December was fixed upon by the Commissioners on which to re-assemble at Hartford, Connecticut, to receive the appeals and take the necessary steps for transmitting their proceedings to his Majesty in Council. In the meanwhile, Mr. William Bayard, one of the most active of the New York agents, and who was largely interested in the grants to be effected by the decision, proceeded to London with a view, as was thought at the time, to anticipate the arrival of the papers with the personal information and influence which he might bring to bear upon the Council;—and the East Jersey Proprietors endeavored not only to fortify themselves against Bayard's representations in England, but also applied to the Provincial legislature to take

their cause under their protection, and grant such pecuniary aid as would enable them to prosecute their appeal efficiently and effectually. This application resulted in the passage of an act, Dec. 6th, 1769,* authorizing the Treasurers to advance to the agents of the Proprietors Three thousand pounds; but the agents were obliged to give bonds to return the amount so advanced whenever demanded;—in other words £3,000 were loaned by the Province to the Proprietors—not given.

On the 8th December, only Messrs. Oliver and Morris reached Hartford, but Messrs. Elliot and Ingersoll arrived the next day. Five, however, were required to constitute a quorum, and could not formally proceed to business unless at the request of both parties, but as Mr. Scot of New York objected, the Commissioners adjourned to the 4th July, 1770, transmitting to Lord Hillsborough, to be laid before his Majesty, a statement of their reasons for so doing, and applying for further instructions.†

The King in Council on 27th April, 1770, directed that full effect should be given to any proceedings of the Commissioners who might attend on the 4th July, without requiring the presence of five—but further action was rendered unnecessary by a mutual agreement between the agents of of the two provinces, whereby the line designated by the Commission was adopted as the line of jurisdiction between them, and the rights of the patentees, possessors, and claimants on either side of the line were confirmed to them irrespective of their derivation from New York or the Proprietors of East Jersey: it being conceived “just and equitable” that they who had not only purchased their lands for a valuable consideration, but, as was the case with many of them, had laid out all their substance in their improvement, should be secured in the enjoyment of the fruits of their labor and industry.

The precise date of this agreement I have not ascertained, but from 21st of May to 20th June Mr. Parker was engaged in travelling through the controverted region, (part of the time having Mr. Stevens associated with him) taking the names of the purchasers of the tracts, examining deeds, and making other arrangements for the final running of the line, which was done by a joint corps of surveyors—Messrs. Wickham and Dennis serving on the part of the East Jersey Proprietors, under the supervision, it is presumed, of Walter Rutherford. On the 12th July, that gentleman had the satisfaction of writing to Mr. Parker, “At last this line-running is concluded. * * * The Patentees in general seem pleased with the business, and I hope we shall get an end of it.”

* Allinson's Laws, p. 235.

† Mr. Stevens and Mr. Rutherford went to Hartford on the part of New Jersey, and the former gentleman communicating the result to Mr. Parker, under date of 18th December, wrote: “Mr. Rutherford and I returned from Hartford Saturday night last at 7 o'clock, after a cold fatiguing journey on horseback, (to save money to the Proprietors,) but Mr. Scot, &c., went in a coach and four.”

" An act was passed by the General Assembly of New York confirming this arrangement on 16th February, 1771, and one by the Legislature of New Jersey September 26th, 1772: both acts receiving the royal approval on the 1st September, 1773, and thus was the line decreed by the Commissioners in 1769—one hundred and eight years after the grant was received from the Duke of York—declared to be "forever" thereafter "the Boundary and Line of Partition between this Colony and the Colony of New York." The New Jersey act* is valuable as a historical document, from its giving the name of the patentees affected by the settlement, with the dates of issue and number of acres in their several grants.

A brief reference to the Division line between East and West Jersey must be made, before bringing this paper to a close.

The establishment of the north partition point at the mouth of the Mackhackimack, instead of in the latitude of 41 deg. 40 min. north, necessarily occasioned some change in the relations between the Proprietors of East Jersey and those of West Jersey, by disturbing the understanding which had existed for more than ninety years as to the course of the line dividing the two provinces.

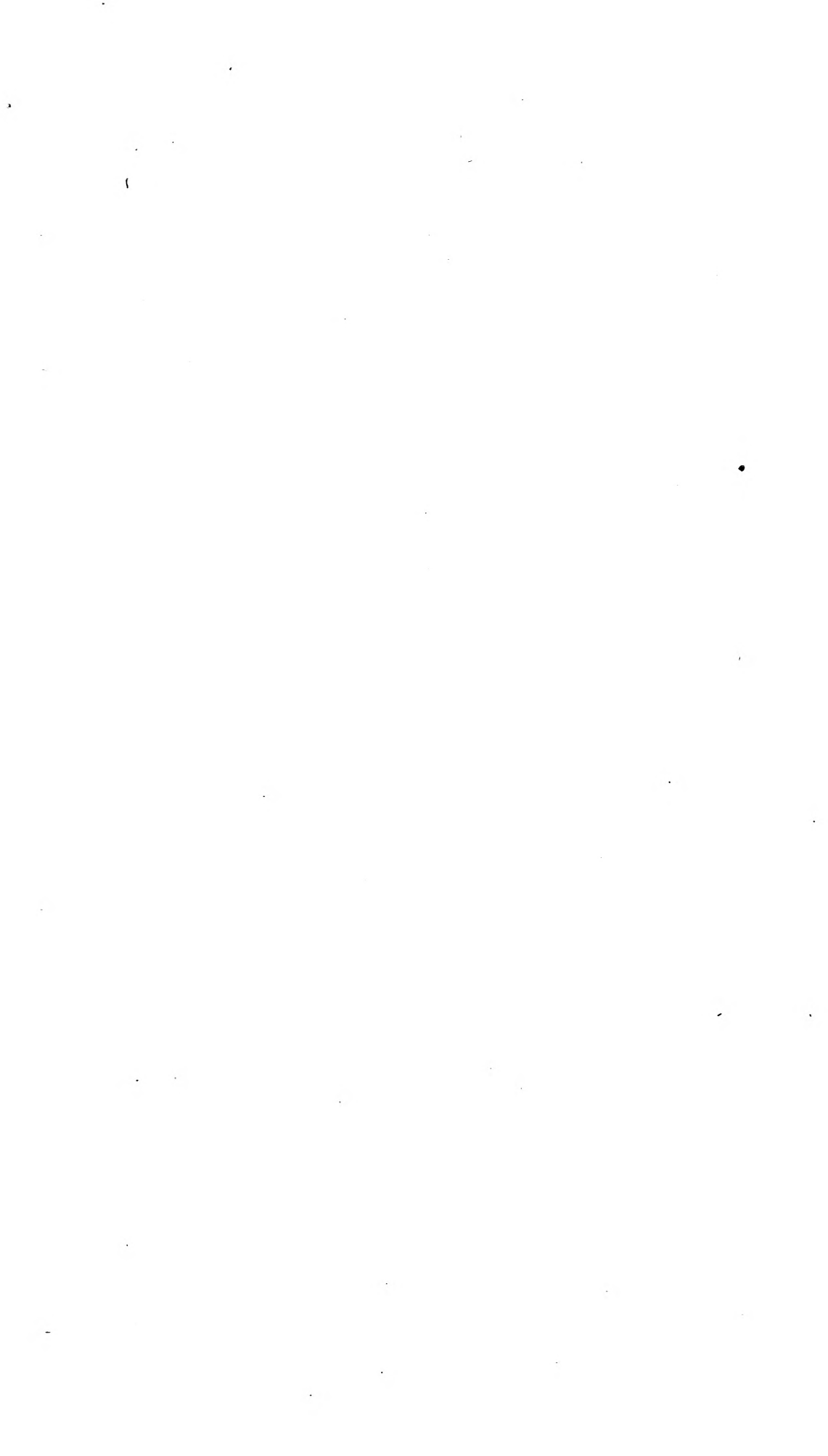
The Quintipartite Indenture by which, on the 1st July, 1676, a division of New Jersey—which previously had been held in common—was made between Sir George Carteret and the assignees of Edward Byllinge, prescribed the following as the boundaries of that portion which thereafter was to be known as "East New Jersey": extending from "Little Egg Harbour to the forty-first degree of latitude on Hudson's River, and crossing over from thence in a straight line extending from that part of Hudson's River aforesaid to the *northernmost Branch, or part of the before-mentioned river, called Delaware River, and to the most northerly point or Boundary of the said tract of land and premises, so granted by his said royal highness James, Duke of York, unto the said Lord Berkley and Sir George Carteret, now by the consent and agreement of the said parties to these presents, called and agreed to be called the North Partition Point, and from thence, that is to say, from the said north partition point, extending southward by a straight and direct line, drawn from the north partition [point] southward, through the said tract of land, unto the most southardly point of the east side of Little Egg Harbour aforesaid; which said most southardly point of the east side of Little Egg Harbour is now by the consent and agreement of the said parties to these presents, called and agreed to be from henceforth called the south partition point, &c."*

It was evidently the intention of the contracting parties to divide the province equally, and it was in pursuance of that intention that the line of George Keith (No. 11 on the map) was commenced in 1687, and run as

* Allinson, p. 368.

far as the south branch of the Raritan. Had it been extended to the Delaware, West Jersey would have contained 53,890 acres less than East Jersey, or 26,945 acres less than half the State, and an agreement was entered into in 1688, having in view the correction of any difference that might exist. But inasmuch as the East Jersey Proprietors claimed from the Duke of York to the latitude of 41 deg. 40 min. on the Delaware, they were obliged, acting consistently, to recognize *that* as the "north partition point" agreed upon in the Quintipartite deed of 1676; and we consequently find that the joint commission of 1719 did establish that as the point from which the line of division was to have run to Little Egg Harbor, (No. 10 on the map) but it was not until September and October, 1743, that it was actually run by John Lawrence; and the East Jersey Proprietors have continued to regard the understanding then arrived at as binding, although it gives to West Jersey an excess of over 1,000,000 of acres. The settlement of the boundary question with New York, and the consequent change in the northernmost point from the stated latitude to the mouth of the Mackhackimack, throwing the "north partition point" farther to the eastward, the West Jersey Proprietors by appeals to the Legislature, took some steps in 1775 toward asserting their right to the lands lying west of a line drawn from the Mackhackimack to Egg Harbor, (No. 9 on the map) which would have given them more than 1,850,000 acres above the proportion of the Proprietors of East Jersey, and again after the Revolution, in 1782, the attempt was renewed, but without success. The internal differences, however, growing out of the controversy with New York, do not legitimately come within the scope of this paper; the principal points will be found stated in Gordon's History of New Jersey,* with references to the authorities that may be consulted for further information.

* pp. 72-75.



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